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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,905	10/10/2003	Kim R. Smith	163.1797US01	3088
43896	7590	12/22/2005	EXAMINER	
ECOLAB INC. MAIL STOP ESC-F7, 655 LONE OAK DRIVE EAGAN, MN 55121			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 12/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,905

Applicant(s)

SMITH, KIM R.

Examiner

Gregory R. Del Cotto

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 1-20 are pending.

Note that, for purposes of examination, the Examiner asserts that the claim terminology "EO/PO copolymer" and "nonionic surfactant" as recited by instant claims 14 and 18 overlap in scope and both may represent an "EO/PO copolymer". This is evidenced on page 7, lines 25-30, of the instant specification which states that the nonionic surfactant may be an EO/PO copolymer. Additionally, the Examiner asserts that the broad terminology "builder" and "alkalinity source" as recited by instant claim 18 overlap in scope and both may represent the same compound such as sodium carbonate, sodium phosphate, etc.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a cleaning composition, classified in class 510, subclass 278.
- II. Claims 14-20, drawn to a method of cleaning a surface, classified in class 134, subclass 42.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the

Art Unit: 1751

composition of Group I can be used in a materially different method such as in a process of treating plants as an insecticide.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Annelliese Siefert on December 13, 2005, a provisional election was made with traverse to prosecute the invention of Group II, claims 14-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1751

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Krezanoski (US 3,852,210).

Krezanoski teaches a stable liquid concentrate comprising about 0.1 to 50% of an active oxygen yielding compound, about 0.5 to 50% of a sulfobetaine or betaine surfactant, about 1 to 50% of a nonionic polyoxyethylene-polyoxypropylene block copolymer surfactant and water. See Abstract. Specifically, Krezanoski teaches a compositions containing 10% urea peroxide, 10% polyoxypropylene-polyoxyethylene surfactant (Pluronic F-108), 0.1% disodium edentate, 10% dodecyl sulfobetaine, 0.25% cetakonium chloride, and water. This composition is useful as a skin cleanser, a hand scrubbing agent, etc. See column 5, lines 50-69 and column 7, lines 45-60. Note that, the Examiner asserts that cleaning skin as taught by Krezanoski would inherently teach rubbing the composition as recited by the instant claims. Krezanoski discloses the claimed invention with sufficient specificity to constitute anticipation. Additionally, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is inherently taught by Krezanoski.

Accordingly, the teachings of Krezanoski anticipate the material limitations of the instant claims.

Claims 14 , 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erilli et al (US 5,629,279).

Erilli et al teach a high foaming, nonionic surfactant based, light duty liquid detergent with desirable cleansing properties and mildness to the human skin comprising a water soluble nonionic surfactant as the major active ingredient, in an amount in excess of 50% by weight of the total surfactant content, a supplemental

Art Unit: 1751

amount of a water-soluble, foaming anionic surfactant excluding the ethoxylated alkyl ether sulfates, and a lesser amount of a water-soluble, foaming zwitterionic betaine surfactant, an amide, a dialkanolamide, and amine oxide. See Abstract. Suitable nonionic surfactants include the condensation products of a higher alcohol containing from 8 to 18 carbon atoms condensed with from about 5 to 30 moles of ethylene oxide, compounds formed by condensing ethylene oxide with a hydrophobic base formed by the condensation of propylene oxide with propylene glycol sold under the tradename Pluronic, etc. See column 4, line 20 to column 5, line 50. Note that, the Examiner asserts that cleaning as taught by Erilli et al would suggest rubbing the cleaning composition onto a substrate such as a dish as recited by instant claim 15. Note that, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is clearly suggested by Erilli et al.

Erilli et al do not teach, with sufficient specificity, a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean a substrate using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed

Art Unit: 1751

components, because the broad teachings of Erilli et al suggest a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Man et al (US 2003/0087787).

Man et al teach liquid enzyme cleaning compositions in which the enzyme is stable at alkaline pH. Water is present in a concentration of at least 60% by weight. See Abstract. In one embodiment, the composition include an amphoteric surfactant, a nonionic surfactant, and/or cationic surfactant, a protease, propylene glycol, a builder such as EDTA, dye, hydrotrope, etc. The composition may be used for cleaning carpets, laundry, textiles, etc. See para. 51.

Generally, the concentration of surfactant mixture useful in stabilizing liquid enzyme compositions fall in the range of from about 0.5 to about 40% by weight of the composition. Suitable surfactants include block polyoxypropylene-polyoxyethylene polymeric compounds based upon propylene glycol, ethylene glycol, etc., known under the tradename Pluronic, condensation products of one mole of a saturated or unsaturated, straight or branched chain alcohol having from about 6 to about 24 carbon atoms with about from 3 to 50 moles of ethylene oxide, etc. See paras. 80-108. Amphoteric or ampholytic surfactants such as cocoamphopropionate, cocamphocarboxy-propionic acid, etc., may also be used in the compositions. See paras. 171-176. The surfactants can be used singly or in combination and the

Art Unit: 1751

amphoteric surfactants can be used in combination with nonionics or anionics. See para. 190. Builders are also used in the compositions and include alkali metal salts of silicates, carbonates, phosphates, etc. Polycarboxylate builders may also be used including citric acid, citrate, etc. See para. 194-196. Hydrotropes may also be used in the compositions including anionic surfactants such as alkyl sulfate, alkyl or alkane sulfonate, etc. See paras. 200-203. Note that, the Examiner asserts that cleaning as taught by Man et al would suggest rubbing the cleaning composition onto a substrate such as carpet as recited by instant claim 15. Note that, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is clearly suggested by Man et al.

Man et al do not teach, with sufficient specificity, a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean a substrate using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Man et al suggest a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric

Art Unit: 1751

surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramirez et al (US 6,096,702).

Ramirez et al teach block polymers containing both ethoxylation and propoxylation in one molecule (Pluronic or Tetronic-type surfactants) which can be used to solubilize a volatile hydrocarbon in anionic and amphoteric detergent solutions. See column 1, lines 50-69. The solubilizing agent can be used in amounts from about 0.5 to about 20% by weight. See column 3, lines 55-69. Specifically, Ramirez et al teach a composition containing 30% sodium lauryl ether sulfate, 10% cocoamidopropyl betaine (30% actives), 5% Pluronic F-61, water, and n-pentane. See column 5, lines 10-35. The composition may be used as a skin cleanser, carpet cleaner, hard surface cleaner, etc. See column 1, lines 1-15. Note that, the Examiner asserts that applying the cleaning composition to a surface such as a carpet, skin, or hard surface would inherently involve rubbing the composition onto the substrate to clean. Additionally, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is inherently taught by Ramirez et al. Ramirez et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Ramirez et al anticipate the material limitations of the instant claims.

Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/24854

'854 teaches improved aqueous carpet cleaning compositions which are ideally suited for use in machinery designed or used in the mechanical cleaning of carpets. The compositions are alkaline, and include one or more deterative surfactants, preferably one or more nonionic surfactants and one or more anionic surfactants, at least about 2% by weight of aminopolycarboxylic acid salt, an organic solvent constituent, an anti-resoiling agent, as well as further optional constituents. See Abstract. Suitable surfactants include anionic, cationic, nonionic, amphoteric surfactants, etc. The most preferred anionic surfactants include alkylated naphthalene sulfates, and alkylated naphthalene sulfonates which fall under the category of anionic hydrotropes. See page 4, lines 10-30. Suitable nonionic surfactants include alkoxy block copolymers based on ethoxy/propoxy block copolymers under the tradename Pluronic, amine oxides, etc. See page 4, line 30 to page 6, line 25. Optional components present in the composition include preservatives, pH buffers, etc. Suitable pH buffers include alkali metal silicates, carbonates, etc. See page 10, line 1 to page 11, line 15. The optional components should not exceed about 20% by weight of the composition. See page 18, lines 1-15. Suitable aminopolycarboxylic acid salts include EDTA and salts thereof. See page 21, lines 1-30.

The method of cleaning carpet fibers, carpets, and carpeted surfaces such as on walls, floors and the like which comprises the step of providing to such a machine the compositions and utilizing the machine in the cleaning of said fibers, carpets or carpeted

floors. See page 2, lines 15-30. The compositions may be conveniently applied to a substrate by spraying, dipping, coating, padding, foam or roller application, etc., which would suggest brushing or rubbing as recited by the instant claims. See page 19, line 20 to page 20, line 15. Note that, the Examiner has interpreted claim 17 which recites removing a portion of the composition from the surface as being the same as rinsing a portion of the composition from the surface which is clearly suggested by '854.

'854 does not teach, with sufficient specificity, a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean a substrate using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '854 suggests a method of cleaning using a cleaning composition containing an EO/PO copolymer, an amphoteric surfactant, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered

Art Unit: 1751


to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD

Application/Control Number: 10/683,905

Page 13

Art Unit: 1751

December 14, 2005